**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**O.O.C.J.**

**SUMMONS FOR JUDGMENT NO. 616 OF 2005**

**IN**

**SUMMARY SUIT NO. 2139 OF 2005**

Equipar srl Ltd
.....**Plffs.**
vs.
Glaxo Smithkline Pharmaceuticals Ltd
.....**Defnds.**

C.S. Balsara with Raju Gawdei/by K. Ashar and Co. for the plaintiffs.
Yogendra Kanchan i/by. Deven Dwarkadas and Partner for the defendants.

**CORAM: S.U. KAMDAR, J.**

**DATE : 27th February, 2006.**

**P.C. :**.

1.The present suit is filed for the recovery of sum of 34,841 U.S.$ equivalent to Rs.15,09,312/-. The said claim arises out of the purchase order which is at Exhibit-C to the plaint dated 14.10.2002.

2. An invoice was issued on 16.12.2002. There is no dispute as to the delivery of the said goods. It is also not disputed that the payment under the said invoice has not been made. However learned counsel for the defendant has contended that inrespect of past supplies in July 2002 the goods were found defective and that the defendant has admitted the same by their letter dated 6.2.2006 that they will replace the said goods but inspite of the said assurance the defendant has neither replaced the said goods nor refunded the amount which is already received. The defendant therefore contends that the plaintiffs are liable to make payment of an additional amount after the adjustment of the amount covered by the said bill. The defendant contends that the plaintiffs goods were defective inrespect of earlier supplies and thus they are right in refusing to make payment inrespect of the present invoice. In so far as the defence of the defendant is concerned I am of the opinion that though admittedly the goods are delivered in July 2002 and the same were found

defective and though the admission of the liability by the plaintiff that the said goods were defective is dated 6.2.2002, the defendants has filed no proceedings in this court for recovery of the said amount and has taken no steps for enforcing their claim. In that light of the matter I find no substance in the contention advanced by the learned counsel for the defendant. The claim, if any is also prima-facie barred by the law of limitation.

3. In the aforesaid I grant leave to defend to the defendants on the condition of deposit of Rs.10 lacs within a period of four weeks failing which the plaintiff will be entitled to the decree. The amount so deposited will be invested by the Prothonotary and Senior master in fixed deposits of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

4. If the amount is paid as aforestated, then suit is transferred to the list of Commercial

Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

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